

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
EASTERN DIVISION

LIBERTY ASSOCIATES, L.C.,	)	
Appellant,	)	
	)	
v.	)	No. 4:10-CV-117-H
	)	
JACOBS CAPITAL, LLC, et al,	)	
Appellee.	)	

**DESIGNATION OF ITEMS TO BE INCLUDED  
IN RECORD ON APPEAL AND STATEMENT OF ISSUES ON APPEAL  
(Rule 6(b)(2)(B)--Federal Rules of Appellate Procedure)**

NOW COMES Liberty Associates, L.C., by and through undersigned counsel, and submits the following Designation of Items to be Included in Record on Appeal and Statement of Issues on Appeal:

**A. ITEMS INCLUDED IN RECORD ON APPEAL IN DISTRICT COURT**

1. Motion to Employ Investment Banker for Debtors  
Case Reference: 09-07132-8-RDD  
File Date: 08-24-09  
Docket Number: 7
  
2. Motion to (A) Approve Sale of Substantially All Assets of Debtors, (B) Establish Sale Procedures, (C) Transfer Any and All Liens, Claims, Encumbrances and Interests In Assets of Debtors to Proceeds of Sale, (D) Approve Form and Manner of Notice of Sale, (E) Assume and Assign Certain Leases and Executory Contracts, and (F) Schedule Hearings to Establish Sales Procedures and Confirm Sale  
Case Reference: 09-07132-8-RDD  
File Date: 08-24-09  
Docket Number: 9
  
3. Motion to Expedite Hearing  
Case Reference: 09-07132-8-RDD  
File Date: 08-25-09  
Docket Number: 11
  
4. Order Regarding Administration of Estate  
Case Reference: 09-07132-8-RDD  
File Date: 08-25-09

Docket Number: 16

5. Order Approving Form and Manner of Notice and Sale Procedures, Setting Deadlines for Bids and Objections and Scheduling Final Hearing to Confirm Sale  
Case Reference: 09-07132-8-RDD  
File Date: 09-10-09  
Docket Number: 35
6. Motion for Ex Parte Order Authorizing Debtor to Postpone Scheduled Sale  
Case Reference: 09-07132-8-RDD  
File Date: 09-30-10  
Docket Number: 50
7. Motion for Authority to Obtain Post-Petition Financing  
Case Reference: 09-07132-8-RDD  
File Date: 10-01-09  
Docket Number: 56
8. Order Denying Motion for Ex Parte Order Authorizing Debtor to Postpone Scheduled Sale  
Case Reference: 09-07132-8-RDD  
File Date: 10-05-09  
Docket Number: 69
9. Report of Sale  
Case Reference: 09-07132-8-RDD  
File Date: 10-08-09  
Docket Number: 90
10. Response of FB Investments, LLC to Report of Sale  
Case Reference: 09-07132-8-RDD  
File Date: 10-08-09  
Docket Number: 97
11. Order Granting Motion To Employ Investment Banker  
Case Reference: 09-07132-8-RDD  
File Date: 10-15-09  
Docket Number: 108
12. Order Denying Sale Motion  
Case Reference: 09-07132-8-RDD  
File Date: 10-23-09  
Docket Number: 116
13. Interim Order Granting Authority to Obtain Post-Petition Financing and Providing Notice of Further Hearing  
Case Reference: 09-07132-8-RDD  
File Date: 10-23-09

Docket Number: 118

14. FB Investments, LLC's Motion for Relief from Stay Pursuant to 11 USC §362  
Case Reference: 09-07132-8-RDD  
File Date: 11-04-09  
Docket Number: 139
15. Joint Plan of Reorganization Dated November 20, 2009  
Case Reference: 09-07132-8-RDD  
File Date: 11-24-09  
Docket Number: 179
16. Disclosure Statement for Joint Plan of Reorganization Dated November 20, 2009  
Case Reference: 09-07132-8-RDD  
File Date: 11-24-09  
Docket Number: 180
17. FB Investments, LLC's Section 506 and Rule 3012 Motion for Valuation of Secured Claim  
Case Reference: 09-07132-8-RDD  
File Date: 12-04-09  
Docket Number: 198
18. Final Order Granting Authority to Obtain Post-Petition Financing  
Case Reference: 09-07132-8-RDD  
File Date: 12-09-09  
Docket Number: 208
19. Interim Application for Compensation of Michael T. Jacobs and Jacobs Capital, LLC as Investment Banker  
Case Reference: 09-07132-8-RDD  
File Date: 1-20-10  
Docket Number: 257
20. First Amended Joint Plan of Reorganization Dated November 20, 2009  
Case Reference: 09-07132-8-RDD  
File Date: 01-29-10  
Docket Number: 273
21. Amended Report of Voting on Proposed Plan  
Case Reference: 09-07132-8-RDD  
File Date: 01-29-10  
Docket Number: 274
22. Objection of Liberty Associates, LC to Interim Application for Compensation of Michael T. Jacobs and Jacobs Capital, LLC as Investment Banker  
Case Reference: 09-07132-8-RDD  
File Date: 02-10-10

Docket Number: 294

23. Order Confirming First Amended Joint Plan of Reorganization  
Case Reference: 09-07132-8-RDD  
File Date: 02-11-10  
Docket Number: 295
24. Response of Bankruptcy Administrator to Interim Application for Compensation of Investment Banker  
Case Reference: 09-07132-8-RDD  
File Date: 02-16-10  
Docket Number: 306
25. Ex Parte Emergency Motion for Consideration of Certain Legal Issues Addressed in Liberty Associates' Objection to Interim Application for Compensation of Michael T. Jacobs and Jacobs Capital, LLC as Investment Banker, or in the Alternative, Emergency Motion for Clarification and Reconsideration of Terms of First Amended Plan  
Case Reference: 09-07132-8-RDD  
File Date: 02-18-10  
Docket Number: 307
26. Memorandum in Support of Ex Parte Emergency Motion for Consideration of Certain Legal Issues Addressed in Liberty Associates' Objection to Interim Application for Compensation of Michael T. Jacobs and Jacobs Capital, LLC as Investment Banker  
Case Reference: 09-07132-8-RDD  
File Date: 02-18-10  
Docket Number: 308
27. Order Denying Ex Parte Emergency Motion for Consideration of Certain Legal Issues Addressed in Liberty Associates' Objection to Interim Application for Compensation of Michael T. Jacobs and Jacobs Capital, LLC as Investment Banker, or in the Alternative, Emergency Motion for Clarification and Reconsideration of Terms of First Amended Plan  
Case Reference: 09-07132-8-RDD  
File Date: 02-24-10  
Docket Number: 313
28. Debtor's Memorandum Regarding Interim Application for Compensation of Michael T. Jacobs and Jacobs Capital, LLC as Investment Banker  
Case Reference: 09-07132-8-RDD  
File Date: 03-12-10  
Docket Number: 319
29. Memorandum of Law in Support of Objection of Liberty Associates, LC to Interim Application for Compensation of Michael T. Jacobs and Jacobs Capital,

LLC as Investment Banker

Case Reference: 09-07132-8-RDD  
File Date: 03-12-10  
Docket Number: 320

30. Memorandum in Support of Application for Compensation of Michael T. Jacobs and Jacobs Capital, LLC as Investment Banker and Response to Liberty Associates' Objection to Interim Application for Compensation of Michael T. Jacobs and Jacobs Capital, LLC as Investment Banker

Case Reference: 09-07132-8-RDD  
File Date: 03-12-10  
Docket Number: 321

31. Supplemental Affidavit

Case Reference: 09-07132-8-RDD  
File Date: 04-06-10  
Docket Number: 336

32. PDF with attached Audio File. Court Date & Time [ 4/28/2010 1:06:47 PM ]

Case Reference: 09-07132-8-RDD  
File Date: 04-29-10  
Docket Number: 342

33. Order Allowing Application for Compensation of Michael T. Jacobs and Jacobs Capital, LLC as Investment Banker

Case Reference: 09-07132-8-RDD  
File Date: 05-07-10  
Docket Number: 346

34. Notice of Appeal

Case Reference: 09-07132-8-RDD  
File Date: 05-21-10  
Docket Number: 348

**B. ADDITIONAL DESIGNATION OF ITEMS TO BE INCLUDED IN RECORD ON APPEAL**

35. Appellant's Brief

Case Reference: 4:10-cv-00117-H  
File Date: 09-15-10  
Docket Number: 16

23. Appellant's Reply Brief

Case Reference: 4:10-cv-00117-H  
File Date: 11-12-10  
Docket Number: 20

24. Order

Case Reference: 4:10-cv-00117-H  
File Date: 04-12-11  
Docket Number: 21

25. Judgment

Case Reference: 4:10-cv-00117-H  
File Date: 04-12-11  
Docket Number: 22

**C. STATEMENT OF ISSUES ON APPEAL**

1. Whether the District Court erred in holding that the Bankruptcy Court's award of compensation to Jacobs Capital was supported by the Engagement Agreement.
2. Whether the District Court erred in holding that the Bankruptcy Court's award of compensation to Jacobs Capital was consistent with the provisions of 11 U.S.C. §330.
3. Whether the District Court erred in holding that the Bankruptcy Court's unilateral modification of the Jacobs Fee Application and subsequent award of compensation was appropriate under 11 U.S.C. §330.

This the 25th day of May, 2011.

/s/Gregory B. Crampton

Gregory B. Crampton, NC State Bar #991

Kevin L. Sink, NC State Bar #21041

NICHOLLS & CRAMPTON, P.A.

3700 Glenwood Avenue, Suite 500

Raleigh, North Carolina 27612

Telephone: (919) 781-1311

Facsimile: (919) 782-0465

Email: [gcrampton@nichollscrampton.com](mailto:gcrampton@nichollscrampton.com)

Email: [ksink@nichollscrampton.com](mailto:ksink@nichollscrampton.com)

*Appellant Counsel to Liberty Associates, L.C.*

### CERTIFICATE OF SERVICE

It is hereby certified that the foregoing DESIGNATION OF ITEMS TO BE INCLUDED IN RECORD ON APPEAL AND STATEMENT OF ISSUES ON APPEAL was served this day by placing a copy thereof in a depository under the exclusive care and custody of the United States Postal Service in a postage prepaid envelope and properly addressed as follows:

John D. Burns Holmes P. Harden <i>Attorneys for Jacobs Capital, LLC, et al</i> WILLIAMS MULLEN 301 Fayetteville Street, Suite 1700 Raleigh, NC 27602	
---	--

This the 25<sup>th</sup> day of May, 2011.

/s/Gregory B. Crampton  
Gregory B. Crampton, NC State Bar #991  
Kevin L. Sink, NC State Bar #21041  
NICHOLLS & CRAMPTON, P.A.  
3700 Glenwood Avenue, Suite 500  
Raleigh, North Carolina 27612  
Telephone: (919) 781-1311  
Facsimile: (919) 782-0465  
Email: [gcrampton@nichollscrampton.com](mailto:gcrampton@nichollscrampton.com)  
Email: [ksink@nichollscrampton.com](mailto:ksink@nichollscrampton.com)  
*Appellant Counsel to Liberty Associates, L.C.*

*O:\CH11 CRD\A - Liberty Assoc\Appeal USDC\Designation of Record..wpd*